

Application No.: 10/723,624

Docket No.: 65858-0029

**REMARKS**

Claims 1-120 are pending. Claims 1, 14, 30, 44, 64, 84, and 108 are independent claims. In the Office Action, claims 1-63, 92, 94-97, and 103-120 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite for failing to point out and distinctly claim the subject matter which Applicants regard as their invention. Separately, claims 64-120 were rejected under 35 U.S.C. § 112, second paragraph, as incomplete for omitting essential elements. Claims 1, 2, 14-16, 30-31, and 44-53 were rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. 6,577,112 ("Lvovich"). Claims 17-19, 25-29, 32-33, and 39-43, were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Lvovich in view of U.S. 6,380,746 ("Polczynski"). Claims 64-65, 68-69, and 72 were rejected under Section 103 as allegedly unpatentable over Lvovich. The Office Action included no rejections of claims 3-13, 20-24, 34-38, 54-63, 66-67, 70-71, and 73-120 based on prior art. Accordingly, Applicants presume that claims 3-13, 20-24, 34-38, 54-63, 66-67, 70-71, and 73-120 are considered to include allowable subject matter, and will be indicated to be allowable upon overcoming the foregoing Section 112 rejections.

Applicants would like to thank the Examiner and his supervisor for the courtesies extended during a personal interview with Applicants' representatives on July 19, 2005. To address issues discussed during that interview, as well as other informalities, claims 1-2, 14, 19-21, 30, 33-35, 39, 44, 61, 64, 84, 92, 94-98, 103-106, and 108 are amended herein. Further, amendments to the specification have been made to address objections thereto set forth by the Examiner. In view of these amendments and the following arguments, Applicants believe that all pending claims are in condition for allowance.

**I. Section 112 Rejections****A. Claims 1-63, 92, 94-97, and 103-120**

The Examiner rejected claims 1-63, 92, 94-97, and 103-120 under Section 112, second paragraph, alleging that these claims "do not clearly distinguish between the substance used to develop the prediction equation and the substance being monitored." (Office Action, page 3.) Applicants disagree with the Examiner's allegation. However, in order to advance prosecution, Applicants have made certain amendments to the preambles of claims 1, 14, 30, 84, and 108, as well as certain other amendments, that are believed to obviate the foregoing rejection.

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**B. Claims 64-120**

The Examiner rejected claims 64-120 under Section 112, second paragraph, alleging that these claims omitted essential elements in the claimed invention, to wit, "the electrode mechanism disposed in the substance for generating measurements or data over a range of frequencies." (Office Action, page 4.) Applicants respectfully traverse this rejection.

An electrode mechanism 102 is shown as part of a system 100 in Figures 1 and 2 of the application. However, Applicants' specification (para. 25) makes clear that "[a]lthough the invention is described herein with reference to system 100, those skilled in the art will appreciate that other configurations and other components could support the claimed systems and methods." Applicants respectfully submit that the electrode mechanism 102 is not an essential element of the invention of claims 64-120. Accordingly, the foregoing rejection under Section 112 should be withdrawn.

**II. Section 102 Rejections****A. Claims 1-2**

Independent claim 1, as well as claim 2 depending therefrom, stands rejected as allegedly anticipated by Lvovich. As discussed in the aforementioned July 19, 2005 personal interview, Applicants do not believe that Lvovich anticipates numerous elements of claim 1 as originally filed, including the requirement in claim 1 of "creating a combined plot . . ." However, to further clarify the differences between Lvovich and claim 1, Applicants have amended claim 1 to recite that "each x-value corresponds to at most one datum in the combined plot." Lvovich's Figures 2 and 3, alleged by the Examiner to anticipate the recited "combined plot" (Office Action, page 5), show a plurality of Nyquist plots superimposed on one another. Lvovich's graph, having superimposed Nyquist plots, clearly includes x-values corresponding to more than one datum.

Claim 1 is accordingly patentable over the prior art of record. Claim 2 is patentable at least by reason of its dependence from claim 1. Further, Applicants believe that claim 2 is separately patentable, and reserve the right to present arguments relating to the separate patentability of claim 2 in future papers.

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**B. Claims 14-16, 30-31, and 44-53**

Independent claims 14, 30, and 44, as well as claims 15-16, 31, and 45-53 depending therefrom respectively, stand rejected as allegedly anticipated by Lvovich. However, as conceded by the Examiner (Office Action, page 7), Lvovich clearly does not teach or suggest "at least one prediction equation that is generated at least in part by using the at least one datum," as is required by amended claims 14 and 44, nor does Lvovich teach or suggest "generating at least one prediction equation at least in part by using the at least one datum," as is required by amended claim 30. Further, even if Lvovich and Polczynski could be combined, as discussed in the afore-mentioned July 19, 2005 personal interview, Polczynski teaches at most use of "a lookup table containing stored values . . . as a function of temperature." (Col. 5, lines 18-20.) Nowhere does Polczynski teach or suggest that the values stored in his lookup table are used in prediction equations, or that prediction equations are created or used at all.

Claims 14, 30, and 44 are accordingly patentable over the prior art of record. Claims 15-16, 31, and 45-53 are patentable at least by reason of their respective dependence from claims 14, 30 and 44. Further, Applicants believe that claims 15-16, 31, and 45-53 are separately patentable, and reserve the right to present arguments relating to the separate patentability of claims 15-16, 31, and 45-53 in future papers.

**III. Section 103 Rejection of Claim 64**

Claims 64-65, 68-69, and 72 were rejected as allegedly unpatentable over Lvovich. The Examiner conceded that Lvovich does not teach or suggest "creating a second plot that comprises the plurality of first plots by sequentially assigning x-values to selected frequencies in the plurality of first plots," as is required by independent claim 64. (Office Action, page 8.) However, the Examiner took Official Notice that "it is well known to plot a spectra and then to change the scale of the plot so that more information is shown on the screen or so that one part of the plot can be seen closer." (*Id.*) Applicants respectfully submit that the Official Notice taken by the Examiner, even if properly taken, is irrelevant to claim 64.

Claim 64 does not recite "chang[ing] the scale of [a] plot." (*See id.*) Rather, claim 64 requires "creating a second plot that comprises the plurality of first plots." Thus, the Official Notice concerning changing the scale of single plot, and not creating a second plot from a plurality of

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second plots, is clearly misdirected. Indeed, the Examiner's Official Notice says nothing about "creating a second plot that comprises the plurality of first plots," much less "sequentially assigning x-values to selected frequencies in the plurality of first plots." Accordingly, the Examiner's Official Notice is irrelevant to claim 64, and should be withdrawn.

Further, to the extent the Examiner intends to maintain the Official Notice taken in the Office Action, Applicants hereby seasonably challenge the Official Notice taken by the Examiner in accordance with 37 CFR 1.104(d)(2) and MPEP §2144.03. Therefore, the Examiner is required to produce documentary proof as evidence of the Official Notice in response to this communication. In the event that the Examiner does not produce documentary proof, the rejection should be withdrawn.

Claim 64 is accordingly patentable over the prior art of record. Claims 65, 68-69, and 72 are patentable at least by reason of their dependence from claim 64. Further, Applicants believe that claims 65, 68-69, and 72 are separately patentable, and reserve the right to present arguments relating to the separate patentability of these claims in future papers.

### CONCLUSION

For the reasons stated above, all pending claims are believed to be in condition for allowance. Applicants believe that no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. 65858-0029, from which the undersigned is authorized to draw.

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Respectfully submitted,

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